

REMARKS

The application as presented is believed to be in condition for allowance.

There are no formal matters pending.

The Official Action rejected claims 23-38 under 35 USC 102(e) as anticipated by Siemens et al., PCT/EP2004/012026.

It is respectfully submitted that the reference does not qualify as prior art under 35 USC 102(e).

Under 35 USC 102(e), a patent shall not be awarded where the applicant's invention was described by another in a U.S. application, where said U.S. application either (1) became a U.S. patent or (2) resulted in a publication under 35 USC 122(b), that was filed in the U.S. before the invention by said applicant, except that an international application filed under the PCT will have the effect of a U.S. filing date only if the international application i) designated the U.S. and ii) published under Article 21(2) of the PCT in the English language (35 USC 102(e)).

This statute applies to all potential U.S. references based on international applications unless the potential reference was filed prior to November 29, 2000 (MPEP 706.02(a)(II)(B)).

PCT/EP2004/012026 was filed as an international application under the PCT on October 25, 2004. Therefore, the

reference relied upon in the Official Action as PCT/EP2004/012026 is covered by the current version of 35 USC 102(e).

The Official Action notes that PCT/EP2004/012026 was disclosed in U.S. application 10/577,150. It is however pointed out that U.S. App. 10/577,150 was filed on April 26, 2006, as the 35 USC 371 national stage of PCT/EP2004/012026, and published as U.S. Application Publication 2007/0163329.

To the extent that the Official Action is relying on the PCT publication of PCT/EP2004/012026 under Article 21(2), namely: WO 2005/040681, the same was not published in the English language. Therefore, the international filing date of PCT/EP2004/012026 is not available to the reference as a filing date under section 102(e) (please see attached charts from MPEP 706.02(f)(1)(II), indicating that for a WIPO publication of an international application (IA) not published in English, no 102(e) date is available).

Similarly, to the extent that the Official Action might be relying on the U.S. publication application 2007/0163329, the same also has no section 102(e) date (please see Chart I).

Thus no matter which reference is relied upon, that is the International Publication WO 2005/040681 or the U.S. Application publication 2007/0163329, the stubborn fact remains that they are each available as prior art under 35 USC 102(a) or (b) as of their respective publication date. (See Charts I and

II). These publication dates are May 6, 2005 and July 19, 2007, respectively.

The present application has an effective U.S. filing date of October 28, 2004, based on the application being the 35 USC 371 national stage of PCT application PCT/FR04/02783. Consequently, the present application has a constructive invention date that pre-dates the publication dates of either reference. Accordingly, the applied reference is not prior art against the present application under section 102(e).

Reconsideration and withdrawal of the final rejection of the present application are respectfully requested.

From the foregoing, it will be apparent that applicants have fully responded to the April 23, 2008 Official Action and that the claims are patentable. In view of this, applicants respectfully request reconsideration of the claims, as presented, and their early passage to issue.

In order to expedite the prosecution of this case, it is requested that the Examiner telephone the attorney for applicants at the number set forth below if the Examiner is of the opinion that further discussion of this case would be helpful.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any

overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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